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16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE DISTRICT OF NEVADA**

18 UNITED STATES OF AMERICA, )  
19 Plaintiff, )  
20 v. ) CASE NO.: 2:98-cv-00531-LRH-VCF  
21 CLIVEN D. BUNDY, ) REPLY TO THE GOVERNMENT'S  
22 Defendant. ) DECEMBER 22 RESPONSE  
23 )

23 **COMES NOW** Defendant Cliven D. Bundy, by and through Counsel, with this  
24 Reply to the Government's December 22, 2017 response (ECF # 67) regarding  
25 Defendant's Motion to Re-Open, Set Aside and Vacate.  
26

1 The Government begins its Response with statements that Cliven Bundy  
2 “simply ignored” this Court’s October 9, 2013 order. Of course a court order is a  
3 source of law like other sources of law such as statutes, treaties and provisions of  
4 the State and national Constitutions. Cliven Bundy, acting *pro se* at the time, could  
5 only evaluated the order in the context of his knowledge of other sources of law.<sup>1</sup>  
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8 It might be more appropriate to say that the Government simply ignored this  
9 Court’s orders as much as did Cliven Bundy, or treated the orders as something of  
10 a blank check to run roughshod over Bundy and his ranch across multiple  
11 dimensions. The very Declaration of BLM District Supervisor Mary Jo Rugwell  
12 cited by the Government evidences efforts by the BLM to alter, ignore or amend  
13 the court orders on-the-spot in extrajudicial negotiations.<sup>2</sup>  
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18 <sup>1</sup> It has always been Mr. Bundy’s position that his cattle ranching operation is completely lawful  
19 according to state and federal law. As Mr. Bundy pointed out continuously in the pleadings of  
20 this case, Bundy’s interpretation appears to be most consistent with the plain text of Article I,  
21 Section 8, Clause 17 and Article 4 of the Constitution, along with the relevant provisions of the  
22 Treaty of Guadalupe Hidalgo and the various treaties and enactments of Congress and the State  
23 of Nevada regarding ownership of the lands in question. In any case, the orders in this case were  
24 at one time in conflict with court orders in force in another case in the U.S. District of Nevada,  
25 which continues to be actively litigated on appeal. *See United States v. Estate of Hage*, 2013  
26 U.S. Dist. LEXIS 74023, 2013 WL 2295696 (D. Nev. May 24, 2013), *vacated in part*, 810 F.3d  
27 712 (9th Cir. 2016), and *rev’d in part*, 632 Fed. Appx. 338, 2016 WL 209847 (9th Cir. 2016).

28 <sup>2</sup> At paragraph 28 of Rugwell’s 2013 declaration, ECF 50-2, Rugwell states:

Prior to beginning the actual impoundment operation, we worked through the  
Clark County Sheriff to make an offer to Mr. Bundy. The offer involved the BLM  
gathering all of the cattle currently grazing in trespass on federal lands, shipping  
them to the facility of his choice, and giving Mr. Bundy the proceeds from the

1 The Government's response also references the criminal litigation against  
2 Bundy in this District (case #2:16-cr-00046), claiming Bundy "and others  
3 interfered with those operations, and federal officers . . . ultimately abandoned  
4 their efforts citing fear for their safety and the safety of others." Of course, the  
5 Government's words were written before the Chief Judge of this District dismissed  
6 the criminal case due to flagrant prosecutorial and FBI misconduct in the case.  
7 Bundy stands innocent of any offenses in this matter.

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11 **I. THE COURT ORDERS ARE VAGUE, AND ITS VAGUENESS IS  
12 EVIDENCED BY THE EXECUTION OF THE ORDER IN 2014.**

13 Defendant pointed out, in his Rule 60(b) motion, that the officials tasked  
14 with executing the 2013 court orders had difficulty discerning the orders'  
15 parameters. Executing officials barricaded hundreds of thousands of acres of land,  
16 erected First Amendment zones, engaged in wide-scale surveillance, enlisted  
17 undercover informants to entice the Bundy family into violence, and tore up  
18 hundreds of thousands of dollars' worth of water-right improvements.  
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21 The line of cases dealing with 'general warrants' may be the most  
22 applicable. Where a court order or warrant gives *carte blanc* authority to officials  
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25 sale of his livestock in exchange for achieving the goal of safely removing the  
26 cattle from the public lands and resolving the trespass. Mr. Bundy refused the  
27 BLM's offer to assist him in gathering and transporting his livestock so they  
28 could be removed from the federal lands.

1 to rummage without limit in peoples' affairs, such general warrants are *void ab*  
2 *initio*. See *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971) (holding a  
3 general warrant is one that authorizes a "general, exploratory rummaging in a  
4 person's belongings").

5  
6 The Government's response argues that Defendant "failed to provide any  
7 evidence bearing on BLM's subjective interpretation of the Order." But subjective  
8 intent or interpretation are notoriously evasive, and are rarely found openly stated  
9 in memos or press releases. See *International Bhd. of Teamsters v. United States*,  
10 431 U.S. 324, 358 & n.44 (1977) (discussing the difficulty of finding explicit  
11 discriminatory intent, and noting that a factfinder must look at inferences drawn  
12 from the way actors responded to different options). In this case the seemingly-  
13 limitless authority under which the 2014 agents executed the orders belies the  
14 Government's claims that the orders were simple or sufficiently specific.

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19 **II. THE ORDER HAS BEEN SATISFIED DUE TO OFFSETS**  
20 **CAUSED BY BLM DAMAGE TO BUNDY WATER AND RANGE**  
21 **IMPROVEMENTS IN 2014**

22 The Defendant's Rule 60(b) motion was accompanied by an attached  
23 affidavit of Dr. Angus McIntosh, who observed that Bundy's range and water  
24 improvements had been damaged and vandalized by the BLM in April 2014 to the  
25 tune of several hundred thousand dollars. This dollar amount of damages offsets  
26 any claims of fee arrearages asserted by the Government, even if all of Bundy's  
27

1 jurisdictional arguments are wrong and all of the Government's arguments are  
2 correct.  
3

4 In response the Government claims that Bundy's offset argument is "legally  
5 flawed because the 2013 Order does not direct Defendant to make a monetary  
6 payment, and because Defendant's obligation under the 2013 Order to remove his  
7 cattle from the Allotment could not be satisfied by a monetary payment in any  
8 event."  
9  
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11 The Government's arguments here are belied by the Government's factual  
12 assertions elsewhere. It is noteworthy that Terry M. Petrie (one of the Attorneys  
13 for the Government in this matter) was a witness for the prosecution in *United*  
14 *States v. Bundy*, 2:16-cr-00046 on July 20, 2017, where he gave trial testimony  
15 which was quite different from the Government's assertions here.  
16  
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18 In response to the juror question: "If Bundy would have paid grazing fees  
19 continuously, would there have been no trespassing charges?" Petrie gave the  
20 following response:  
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22  
23 THE WITNESS: I hesitate only because I realize I'm kinda  
24 speculating. But there's a form of logic that says that if he's paid the  
25 fees that's required to hold the permit and he's in compliance with the  
26 terms of the permit then there would not have been trespass charges. .  
27 . .  
28

1 It should be noted that the “trespass charges” discussed here were the civil  
2 ‘trespass’ claims made in this civil case resulting in summary judgment against  
3 Bundy.  
4

5 Thus, the Government maintained (in the recent criminal prosecution of  
6 Bundy codefendants Parker, Drexler, Stewart and Lovelien) that the only (or  
7 virtually the only) barrier to the Government’s approval of Bundy grazing on the  
8 Allotment were Bundy’s nonpayment of fees. And the dollar amounts of damages  
9 caused by the Government in 2014 more than offset any arrearages or back fees  
10 alleged by the Government.  
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13 In any case, an evidentiary hearing is necessary to present and sift through  
14 the facts of this matter. Bundy has more than met his prima facia burden of  
15 showing that the orders in question should be set aside and vacated.  
16  
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### 18 **III. THE GOVERNMENT’S CONCEALMENT OF FREE GRAZING** 19 **FROM BUNDY**

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21 The Government’s Response to the Defendant regarding the ‘free-grazing’  
22 provisions of the Taylor Grazing Act is similarly unfounded. The U.S. Code (and  
23 the Code of Federal Regulations) make clear that Bundy qualifies for free grazing  
24 on the lands in question—even if all of Bundy’s constitutional and jurisdictional  
25 arguments are meritless.  
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1 The Taylor Grazing Act, 43 U.S.C. §315(d), provides that ranchers (such as  
2 Bundy) whose base property and residence adjoin public ranges and who need such  
3 ranges to support their domestic livestock are entitled to graze such livestock for  
4 free.:  
5

6 **The Secretary of the Interior shall**  
7 **permit, under regulations to be**  
8 **prescribed by him, the free grazing**  
9 **within such districts of livestock**  
10 **kept for domestic purposes.**

11 43 C.F.R. §4130.5 provides further details:

12 **A free-use grazing permit shall**  
13 **be issued to any applicant whose**  
14 **residence is adjacent to public lands**  
15 **within grazing districts and who**  
16 **needs these public lands to support**  
17 **those domestic livestock owned by**  
18 **the applicant.**

19 Id. (emphasis added).

20 The BLM officials in this case were well aware that Bundy qualifies for  
21 free grazing of livestock in the district, under federal statutes, yet failed to  
22 provide this option to Bundy.

23 The Government's response calls this an "alleged failure to provide  
24 legal advice." But the Ninth Circuit has already ruled that agencies in the  
25 position of the BLM have a duty to inform qualifying ranchers of such options  
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1 (and such information is hardly “legal advice.” *United States v. Wharton*, 514  
2 F.2d 406 (1975).  
3

4 Then the Response claims that “the referenced legal authorities plainly  
5 apply only to livestock kept for domestic purposes,” and then argues that  
6 Bundy’s ranch is a “commercial livestock operation.”  
7

8 But a thorough reading of the statutes, cases and authorities on this  
9 question makes clear that the term “domestic,” in this context applies  
10 precisely to Bundy’s cattle operation. Bundy is an actual settler on the land  
11 and lives domestically adjacent to his herds. Bundy’s cattle are domestic  
12 (rather than wild), and his ranch is not a “commercial livestock operation”  
13 such as a feedlot.  
14  
15

16 Here, Bundy’s argument could hardly more qualify under the law of  
17 equitable estoppel. The federal government misled Bundy into believing he  
18 had no options; and deliberately, almost calculatingly, misled Bundy and this  
19 Court by repeatedly asserting that Bundy has no rights to use the lands in  
20 question while knowing otherwise. Here again, the known facts cry out for  
21 an evidentiary hearing.  
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25 **IV. THE GOVERNMENT WAITED 13 YEARS TO FILE POST-**  
26 **ORDER MOTIONS IN THIS CASE BUT COMPLAIN THAT**  
27 **DEFENDANT’S MOTION IS UNTIMELY**  
28



1 Finally, the Government argues that the Defendant's motion should be  
2 denied as untimely. The Government cites *Lemoge v. United States*, 587 F.3d  
3 1188, 1196-97 (9<sup>th</sup> Cir. 2009) for the proposition that "What constitutes a  
4 'reasonable time' depends upon the facts of each case, taking into consideration the  
5 interest in finality, the reason for delay, the practical ability of the litigant to learn  
6 earlier of the grounds relied upon, and prejudice to the other parties." By these  
7 very principles, the Defendant's motion is quite timely.

8 The Government itself is responsible for much of the delay in this case, as it  
9 imprisoned Cliven Bundy and insisted that Courts grant Bundy no bail, for a period  
10 of 700 days. Indeed Mr. Bundy has even now been out of custody for less than a  
11 week.

12 In comparison, the Government allowed the 1998 and 1999 court orders in  
13 this case to lapse for a decade before bringing a motion in 2013 to revive this then-  
14 closed case.

15 In this case, the Defendant's motion could hardly be more timely. Indeed,  
16 the climactic events of April 2014, in which hundreds of Americans rallied to  
17 demonstrate against the heavy-handedness of the Government's execution of the  
18 orders in this case cry out for review by this Court.

1 RESPECTFULLY SUBMITTED,

2 /s/ Roger Isaac Roots, esq.

3 Attorney for Cliven Bundy

4 *Pro hac vice*

5 Rober O. Kurth, Jr.

6 Local Counsel

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8 **CERTIFICATE OF SERVICE**

9 I, Roger Roots, esq., do hereby certify that a true and correct copy of the  
10 foregoing pleading was served upon counsel of record, via CM/ECF.

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13 Dated this 12<sup>th</sup> day of January, 2018

14  
15 /s/ Roger Roots,

16 *Counsel for Def. Cliven Bundy*  
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